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Attorneys for Garney Pacific, Inc.

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION,

-and-

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

Case No. 19-30088 (DM)

Chapter 11

(Lead Case) (Jointly Administered)

**VERIFIED RESPONSE OF GARNEY
PACIFIC, INC. IN OPPOSITION TO
REORGANIZED DEBTORS' SIXTY-
SECOND OMNIBUS OBJECTION TO
CLAIMS (BOOKS AND RECORDS
CLAIMS) – CLAIM NO 2942.**

- ☐ Affects PG&E Corporation
☐ Affects Gas and Electric Company
☒ Affects both Debtors

Hearing:

Date: April 7, 2021

Time: 10:00 a.m. (Pacific Time)

Place: (Telephonic Appearances Only)
United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

Creditor/Respondent Garney Pacific, Inc. (“**Garney**”), offers the following Verified Response in opposition to Debtors’ Objection to Claims (Books and Records Claims) (the “**Objection**”)(Doc. 10287) as it relates to Garney’s Claim No. 2942 (the “**Proof of Claim**”). For the following reasons, the Objection must be denied.

1 **I. Claim Information**

2 a) **Claimant Name:** Garney Pacific, Inc.

3 b) **Claim Number:** 2942

4 c) **Claim Amount:** \$85,465.83

5 d) **Basis of Claim:** Service Performed – Costs incurred by Claimant due to mismarking
6 of Field Marks by PG&E in area excavated by Claimant, as described in more detail
7 below.

8 e) **Person with Settlement Authority:** Steve Sutton, Lathrop GPM LLP, 2345 Grand
9 Blvd, Suite 2200, Kansas City, MO 64108 / 816-460-5526 /
steve.sutton@lathropgpm.com

10 **Memorandum of Points and Authorities**

11 **II. Introduction**

12 Debtor's Objection is made on the grounds that "[t]he Reorganized Debtors have
13 determined that the Books and Records Claims assert liabilities for which the Reorganized
14 Debtors are not liable or in excess of the amounts as reflected in their books and records."
15 Objection at p. 5. The Objection fails for a complete lack of support of the Debtors' position – the
16 Affidavit accompanying the Objection is nothing more than a boilerplate affidavit that lacks any
17 specificity as to the Proof of Claim. With this response Garney will provide the Court with
18 information that provides cause to deny the Objection and, for the forgoing reasons, the Objection
19 must be denied.
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22 **III. Basis for Claim**

23 Garney's Proof of Claim derives from work done on three (3) contracts (the "**Contracts**")
24 for the City of Fresno, California by Garney. True and correct copies of the Contracts are attached
25 hereto and incorporated by this reference as group Exhibit A. Pursuant to the Contracts, Garney
26 performed services relating to Water and Wastewater Management Construction (the "**Services**").
27 In order to perform the Services, Garney was required to conduct excavation. Because the area of
28 excavation contained already existing utility lines (the "**Existing Lines**") maintained or used by

1 Debtors, Debtors were required to field mark the location of the Existing Lines (the “**Field**
2 **Marks**”) so that Garney could avoid contact with the Existing Lines. In short, Debtors mismarked
3 the Existing Lines in two separate excavation areas, instead marking older, unused lines (the
4 “**Unused Lines**”). Garney relied on the Field Marks when performing the Services and as a result
5 Existing Lines were struck and damaged, and repair costs and expenses were incurred. Debtors
6 are obligated to Garney for repayment thereof.
7

8 **IV. Argument**

9 California Government Code Section 4216, *et seq.* governs the liabilities between the
10 parties. Section 4216.3 requires that the operator of sub-surface installations (Debtors) locate and
11 field mark the subsurface installations within an area that is to be excavated. Cal. Gov't Code §
12 4216.3 (West). Section 4216.4 requires the excavating party (Garney) to use hand tools if the
13 excavation is within the tolerance zone. Cal. Gov't Code § 4216.4 (West) (the “tolerance zone”
14 being defined as “24 inches on each side of the field marking placed by the operator . . .”). Cal.
15 Gov't Code § 4216 (West)). Thus, if work is being done outside the tolerance zone, hand tools are
16 not required. Finally, Section 4216.7(a) and (c) define liabilities should either the line operator or
17 the excavator fail to comply with the provisions of the Chapter. Cal. Gov't Code § 4216.7 (West).
18

19 Here, Debtors, as operator of the Existing Lines, failed to comply with Section 4216.3 of
20 the Cal. Gov't Code by incorrectly placing the Field Marks and marking the incorrect, Unused
21 Lines. True and correct copies of claims submissions and related correspondence provided to
22 Debtors which detail the incorrect Field Marks and which include measurements showing that the
23 excavation was performed by Garney outside of the 24-inch tolerance zone provided for in Section
24 4126.4, are attached hereto and incorporated by this reference as Exhibit B. As such, Debtors are
25 “liable for damages to [Garney] . . . including liquidated damages, liability, losses, costs, and
26 expenses, actually incurred by the excavator, resulting from the operator’s failure to comply with
27 these specified requirements to the extent the damages, costs, and expenses were proximately
28

1 caused by the operator's failure to comply." Cal. Gov't Code § 4216.7(c) (West). Moreover,
2 because the inaccurate Field Marks by Debtors were the cause of the damage, Garney "shall not
3 be liable for damages, replacement costs, or other expenses arising from damages" to the Existing
4 Lines. Cal. Gov't Code § 4216(d) (West).

5
6 The Proof of Claim is supported by line items of Garney's actual damages incurred as a
7 result of the incorrect Field Marks. While Section 502(b)(1) of the Bankruptcy Code provides that
8 a claim may not be allowed if "such claim is unenforceable against the debtor and property of the
9 debtor under any agreement under applicable law," the foregoing shows, the opposite is true and
10 that the claim is enforceable against Debtors – applicable law specifically identifies liabilities and
11 as such authorizes Garney's claim. The Objection cites authority that discusses shifting the
12 burden back to Garney, however in order to do so the Debtors must raise "facts tending to defeat
13 the claim by probative force equal force to that of the allegations of the proofs of claim
14 themselves." Objection at p. 5, citing *Wright v. Holm (in re Holm)*, 931 F.2d 620, 623 (9th Cir.
15 1991). The Debtors have done nothing to shift the burden. Debtors correctly note that if they
16 raise facts to defeat the Proof of Claim, the "burden reverts to the claimant to prove the validity of
17 the claim by a preponderance of the evidence." Objection at p. 5, citing *Ashford v. Consolidated*
18 *Pioneer Mortgage (In re Consolidated Pioneer Mortgage)* 178, B.R. 222, 226 (B.A.P. 9th Cir.
19 1995). However, the Debtors have raised no "facts tending to defeat" Garney's Proof of Claim –
20 they raise no facts at all, save generic statements about the grouping of claims they are objecting
21 to. The Proof of Claim and the attachments to this Response prove the validity of the claim by a
22 preponderance of the evidence. Accordingly, the Objection must be overruled the Proof of Claim
23 allowed to stand.
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26 Based on the foregoing argument and authorities, Debtor's Motion must be denied.
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1 WHEREFORE, Garney Pacific, Inc. respectfully requests that the Court enter an order
2 denying Debtors' Objection to Claim Number 2942, and for such other relief as this Court deems
3 just and proper.
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5 Dated: March 23, 2021

LATHROP GPM LLP

6 By: /s/ Caroline A. H. Sayers
7 Caroline A. H. Sayers
8 Attorneys for Creditor/Respondent
9 Garney Pacific, Inc.
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Verification

The undersigned Bill E. Williams, states that he is an Officer of Garney Pacific, Inc, and in that capacity did execute this Verification on its behalf and is duly authorized to do so. The undersigned is either personally familiar with the matters stated herein or have become familiar through the review of the business records of Garney Pacific, Inc., which were made at or around the time of the events described. The statements made are true and correct to the best of his knowledge, information, and belief.

Pursuant to 11 U.S.C §1746, I declare verify under penalty of perjury that the foregoing is true and correct.


Bill E. Williams
Officer, Garney Pacific, Inc.

Executed on 3-22-21, in Tracy, CA (City, State)